

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Petition by Pinnacles Telephone Co. (U 1013-C) for Arbitration of a Compensation Agreement with Cingular Wireless Pursuant to 47 C.F.R. §20.11(e).

Application 06-02-029  
(Filed February 27, 2006)

In the Matter of Omnipoint Communications, Inc. d/b/a T-Mobile USA (U-3056-C) Petition for Arbitration with Pinnacles Telephone Company (U-1013-C) Pursuant to Section 252(b) of the Communications Act.

Application 06-02-040  
(Filed February 27, 2006)

**ADMINISTRATIVE LAW JUDGE'S RULING GRANTING PETITION FOR ARBITRATION AND MOTION FOR CONSOLIDATION**

**1. T-Mobile's Petition for Arbitration and Waiver Request**

Omnipoint Communications, Inc., a commercial mobile radio service (CMRS) provider (T-Mobile) and Pinnacles Telephone Company (Pinnacles), a rural local exchange carrier (LEC) have been negotiating a compensation agreement since August 18, 2005. T-Mobile filed a petition for arbitration of the agreement on February 27, 2006. The petition was fragmentary and accompanied by a request for waiver of our arbitration rules. The waiver request asserted that full compliance with our rules was impossible because T-Mobile was not told until the last minute that Pinnacles had decided not to petition for arbitration of the compensation agreement. One week later, T-Mobile filed an amended petition that fully complied with our rules.

The narrow legal question is whether T-Mobile has a right under federal law<sup>1</sup> to compel arbitration of the compensation agreement. If T-Mobile has such a right, then its arbitration petition was timely filed and its request for waiver should be granted.

I look first to §252(b)(1) of the Federal Communications Act which provides, in relevant part:

During the period between the 135<sup>th</sup> and 160<sup>th</sup> day inclusive from the date on which an incumbent (LEC) receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues. 47 U.S.C. § 252(b)(1).

T-Mobile filed its petition for arbitration of the compensation agreement and the related waiver request on the 159<sup>th</sup> day of the period.

Pinnacles opposed T-Mobile's petition on the grounds that T-Mobile lacked standing under applicable federal law to compel arbitration of a compensation agreement, citing FCC Rule 20.11(f):

An incumbent local exchange carrier may request interconnection from a commercial mobile radio service provider and invoke the negotiation and arbitration procedures contained in section 252 of the Act. A commercial mobile radio service provider receiving a request for interconnection must negotiate in good faith and must, if requested, submit to arbitration by the state commission.

The FCC adopted Rule 20.11(f) on February 17, 2005 in Docket No. 01-92. In its Order adopting the new rule, the FCC wrote:

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<sup>1</sup> The commission when acting as an arbitrator of interconnection agreements is exercising powers delegated to it by the FCC and must apply federal law to determine the rights of the parties.

15. We acknowledge that LECs may have had difficulty obtaining compensation from CMRS providers because LECs may not require CMRS providers to negotiate interconnection agreements or submit to arbitration under section 252 of the Act. In the Local Competition First Report and Order, the [FCC] held that section 251(b)(5) requires LECs to enter into reciprocal compensation arrangements with CMRS providers but that it does not explicitly impose reciprocal obligations on CMRS providers.....[Citations omitted]

16. In light of our decision to prohibit the use of tariffs to impose termination charges on non-access traffic, we find it necessary to ensure that LECs have the ability to compel negotiations and arbitrations, as CMRS providers may do today. Accordingly we amend section 20.11 of our rules to clarify that an incumbent LEC may request arbitration from a CMRS provider and invoke the negotiation and arbitration procedures set forth in section 252 of the Act...[Citations omitted]

I conclude that this language makes plain the FCC's intention to confer on LECs a right to compel arbitration already held by CMRS providers. Rather than limiting the rights of CMRS providers, Rule 20.11(f) simply expands the rights of LECs so that they equal those of CMRS providers. In short, it levels the playing field.

T-Mobile's failure to comply with all of our arbitration requirements was minimal and excusable given the short time it had to make a filing that met the deadlines contained in §252 of the Communications Act. Further, minor state procedural requirements should not be imposed as a barrier to the exercise of substantial federal rights. Accordingly, the request for waiver should be granted and T-Mobile's Amended Petition for Arbitration should be accepted. The Docket Office will be directed to accept the filing consistent with this ruling.

## **2. The Joint Petition of Cingular and T-Mobile to Consolidate Proceedings**

The issues of law and fact contained in the proceedings filed by Pinnacles against Cingular and T-Mobile against Pinnacles are virtually identical. The T-Mobile traffic terminated by Pinnacles formerly belonged to and is closely tied to the Cingular traffic terminated by Pinnacles. Efficiency and consistency will be served by consolidating the procedures pursuant to Commission Rule 55. Accordingly, the petition to consolidate should be granted.

### **O R D E R**

**IT IS ORDERED** that:

1. T-Mobile's Amended Petition for Arbitration is granted.
2. The Joint Motion of Cingular and T-Mobile to Consolidate Arbitration Proceedings is granted.

Dated March 24, 2006, at San Francisco, California

/s/ KARL BEMESDERFER

Karl Bemesderfer  
Administrative Law Judge

### **CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting Petition for Arbitration and Motion for Consolidation on all parties of record in this proceeding or their attorneys of record.

Dated March 24, 2006, at San Francisco, California.

/s/ JOYCE TOM

Joyce Tom

### **N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.